Supreme Court, U.S.
FILED
JAN 28 2004
OFFICE OF THE CLERK

No. 03-709

In The Supreme Court of the United States

CIGNA HEALTHCARE OF CALIFORNIA, INC.
(Erroneously sued as CIGNA HEALTHCARE, INC. and CIGNA HEALTHPLANS OF SOUTHERN CALIFORNIA),

Petitioner,

vs.

MUZEYYEN BALABAN-ZILKE, Ph.D., individually and as successor-in-interest to BRAD ZILKE,

Respondent.

On Petition For A Writ Of Certiorari To The Court Of Appeal Of California, Second Appellate District

PETITION FOR REHEARING PENDING RESOLUTION OF RELATED PETITION FOR WRIT OF CERTIORARI

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PETITION FOR REHEARING

Petitioner CIGNA HealthCare of California, Inc. (CHC) respectfully moves this Court for an order (1) vacating its denial of the petition for writ of certiorari entered on January 12, 2004, and (2) granting the petition.

This Court should grant CHC's petition for rehearing if it grants the pending petition for writ of certiorari in *Allen v. Pacheco*, 71 P.3d 375 (Colo. 2003), *petition for cert. filed,* 72 U.S.L.W. 3310 (U.S. Oct. 28, 2003) (No. 03-642) which raises the identical question presented by CHC's petition. *See, e.g., Simmons v. Sea-Land Servs. Inc.*, 462 U.S. 1114 (1983) (rehearing granted and case remanded in light of Supreme Court opinion in a related case); *Florida v. Rodriguez*, 461 U.S. 940 (1983) (same); *Forgett v. United States*, 390 U.S. 203 (1968) (same).

The state courts in *Allen* and *Balaban-Zilke* both refused to enforce arbitration agreements in health care plans because the agreements did not meet special requirements set by state law. *Compare Balaban-Zilke v. CIGNA HealthCare of Cal., Inc.*, No. B140672, 2003 WL 21228038, at *2-6 (Cal. Ct. App. May 28, 2003) *and* Cal. Health & Safety Code § 1363.1 (West 2000), *with Allen v. Pacheco*, 71 P.3d 375, 377 (Colo. 2003) *and* Colo. Rev. Stat. § 13-64-403 (2003). Both petitions present the identical "reverse preemption" question – whether the McCarran-Ferguson Act saves state laws that impose special requirements on arbitration agreements in health care plans from preemption by the Federal Arbitration Act. *See* CHC's Pet. at i; Allen's Pet. at i.

If this Court grants the petition for writ of certiorari in *Allen v. Pacheco*, it should also grant CHC's petition.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

As counsel for the petitioner, I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44(2) of the Rules of this Court.

JEREMY B. ROSEN